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SUBJECT: PANAMA: 2007 NATIONAL TRADE ESTIMATE

REF: STATE 136315

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TRADE SUMMARY  
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¶1. The U.S. trade surplus with Panama was \$1.84 billion in 2005, an increase of \$334 million from \$1.5 billion in 2004. This represented the U.S.'s seventh largest trade surplus world-wide. U.S. goods exports in 2005 were \$2.17 billion, up 18.2 percent from the previous year. Corresponding U.S. imports from Panama were \$327 million, up 3.5 percent from ¶2004.

¶2. During the first six months of 2006, the U.S trade surplus with Panama was \$1.09 billion, a 12.7 percent increase from the similar period in 2005. During the first six months of 2006, U.S. goods exports were \$1.29 billion, a 15.4 percent increase from the same period in 2005. U.S. imports during the first six months of 2006 also increased 33.0% percent to \$200 million.

¶3. The chief U.S. exports to Panama are mineral fuel products which accounted for 25.8 percent of all U.S. exports to Panama during 2005 and 33.5 percent during the first six months of 2006. Panama's chief exports to the U.S. are shrimps and other fish products which accounted for 32 percent of all imports from Panama in 2005 and 22.01 percent during the first six months of 2006. The U.S. accounted for 26.7 percent of the value of Panama's total imports during the first six months of 2006. Panama is currently the 45th largest export market for U.S. goods.

¶4. According the U.S. Department of Commerce's Bureau of Economic Analysis (BEA), the stock of U.S. foreign direct investment (FDI) in Panama in 2005 was \$5.16 billion, down from \$5.63 billion in 2004. U.S. FDI in Panama is concentrated largely in the financial, energy, and maritime sectors. According to the BEA, FDI from Central and South America in the U.S. during 2005 was greatest from Panama, with \$11.4 billion in U.S. investments.

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FREE TRADE NEGOTIATIONS  
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¶5. In April 2004, the United States and Panama began negotiating a free trade agreement (FTA). Negotiations proceeded through nine rounds, the most recent of which concluded in January 2006. As of late 2006, U.S. and Panamanian negotiators continued to discuss possible ways forward to successfully conclude an FTA. A bilateral FTA

with Panama would be a natural extension of an already largely open trade and investment relationship. Panama is unique in Latin America, but like the United States, in that it is predominantly a services-based economy, as services represent about 80% of Panama's GDP. Following passage of the U.S. FTA with Central America and the Dominican Republic (CAFTA-DR), a bilateral FTA with Panama could further boost momentum for lowering trade and investment barriers throughout the region. However, approximately 90 percent of Panama's goods exports to the U. S. enter duty free under unilateral benefits programs like the Caribbean Basin Initiative (CBI) and the Generalized System of Preferences (GSP) or under 0 percent MFN tariffs.

## ----- IMPORT POLICIES -----

### ----- Tariffs -----

¶6. Following its accession to the World Trade Organization (WTO) in 1997, Panama opened its markets considerably and its tariffs ranked among the lowest in Latin America, averaging just 8 percent. However, in September 1999, Panama raised selected agricultural tariffs, some of which reached the maximum amount allowed under Panama's WTO commitments. Panama maintains a list of 16 sensitive agricultural imports which tariffs ranging from 10 percent to 273 percent. For example, Panama retains tariffs of 273 percent for chicken, 63-159 percent for dairy products, 83 percent for tomatoes and over-quota potatoes, 74 percent for pork, 55 percent for rice, 20 percent on sparkling wine and other fermented beverages, and 40 percent on still wines. In addition, Panama charges a 10 percent tax on sparkling wine and 15 percent on still wines. Panama also increased the tariff on frozen french fries from 15 percent to 20 percent. The maximum tariff on industrial imports is 15 percent.

### ----- Non-Tariff Measures -----

¶7. In addition to tariffs, all imports into Panama are subject to a 5 percent transfer (or ITBM) tax levied on the CIF value, and other handling charges. Pharmaceuticals, foods, and school supplies are exempt from the transfer tax. Currently, Panama does not require import licenses on manufactured goods in the country, provided the importing entity holds a commercial or industrial license to operate in Panama.

## ----- -- STANDARDS, TESTING, LABELING, AND CERTIFICATION ----- --

¶8. As a WTO member, Panama implemented the WTO's Agreement on Technical Barriers to Trade (TBT) that includes the Code of Good Practice for the Preparation, Adoption and Application of Standards. The Government of Panama (GOP) passed Law 23 of July 15, 1997, which established new dispositions on product standards, labeling and certification policy, and redefined the functions of the Directorate General of Standards and Industrial Technology (DGNTI) and the Panamanian Commission for Industrial and Technical Standards (COPANIT). Basically, DGNTI was given the main role in establishing standards and technical regulations, while COPANIT was given an advisory role to DGNTI. The National Council for Accreditation (CNA) was charged with all national accreditations.

¶9. According to WTO guidelines, Panama informs WTO of any standards or technical regulations activities. U.S. companies can participate in the standards development process by contacting DGNTI and submitting specific requests or suggestions. There are no limitations to participation by foreign countries.

¶10. Products for which Panama has not set standards/regulations can enter the Panamanian market provided that they comply with standards and technical regulations from the U.S. Europe or any industrial country.

¶11. Panama has an open economy and there are no significant market access problems related to standards and technical regulations. However, certain market access problems have occurred in the past with several agricultural products, mostly related to sanitary and phytosanitary (SPS) issues. Of particular concern had been the lack of procedural transparency by relevant Panamanian authorities in deciding whether to issue phytosanitary permits. However, the GOP's new Minister of Agriculture appointed in early 2006 and the creation of a new &Food Safety Authority<sup>8</sup> have helped to bring about improved transparency in the SPS permitting process. To date, the Embassy has not received any new complaints from local importers alleging abuse of SPS permits to block imports of U.S. agricultural products.

¶12. Panama requires that Panamanian health and agriculture officials certify individual U.S. processing plants as a precondition for the import of poultry, pork, dairy, and beef products. U.S. exporters have assisted Panamanian officials in inspecting U.S. plants, and there have been no instances of a failed inspection by a U.S. plant. However, inspections are often delayed due to budgetary constraints and the lack of personnel in the responsible Panamanian ministries. As such, it is the United States, priority to obtain Panamanian recognition of the U.S. meat inspection system in place of the current plant-by-plant approach.

¶13. In December 2003, following detection of the first case of bovine spongiform encephalopathy (BSE), or &Mad Cow<sup>8</sup> disease in the U.S., the Panamanian Agriculture Ministry banned importation of U.S. beef. The ban remained in place for until March 2005, despite U.S. assurances that BSE-infected beef never entered the human food supply. Shortly after the U.S. discovered a second BSE case, the Agriculture Ministry reinstated the ban in May 2005. Following questionable reporting requirements imposed on the U.S. Department of Agriculture and problematic delays, the Agriculture Ministry lifted the ban in October 2005. Before the ban, Panama imported an estimated 12,000 pounds (5,400 kilograms) of U.S. beef yearly.

¶14. Panama's import licensing process for agricultural products has often been arbitrary and non-transparent, constituting a major impediment for U.S. exporters. For example, Panamanian importers of U.S. processed potatoes had difficulties obtaining import permits in 2003 and 2004. In one instance, arguing that U.S. processed potatoes compete directly with domestic fresh potatoes, the Panamanian government refused to issue import permits for frozen french fries, disrupting the extensive quick service restaurant industry within the country.

¶15. While importers of non-agricultural products must register them with the Ministry of Commerce and Industry before distribution or sale in Panama, procedures for registration are usually straightforward and evenly applied. There is no comprehensive labeling or testing requirement for imports, except for food and pharmaceutical products. U.S. industry is seeking a commitment from the Panamanian government to provide explicit recognition of Bourbon and Tennessee Whiskey as a trademark.

¶16. When the United States launched FTA negotiations in 2004, it simultaneously initiated a working group on SPS barriers to agricultural trade to meet in parallel with the negotiations and to work on resolution of SPS issues even after the negotiations conclude.

¶17. In early 2006, the Panamanian Government created a new &Panamanian Food Safety Authority<sup>8</sup> mandated to assume control over the inspection of all food imports into Panama as of November 15, 2006. This new authority is expected to

improve transparency and predictability by adhering to science-based decision-making. The new authority will charge importers a tariff for placing security stamps on at risk food products entering or transiting Panama.

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GOVERNMENT PROCUREMENT  
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¶18. Panamanian Law 22 of 2006 regulates government procurement and other related issues. The law replaces Law 56 and is intended to streamline and modernize Panama's contracting system. Law 22 establishes, among other things, an internet-based procurement system ([www.panamacompra.gob.pa](http://www.panamacompra.gob.pa)) which requires publication of all government purchases thereby allowing for greater flexibility, speed and transparency in government purchases. The new law also creates a new administrative court to handle all public contracting disputes. The rulings of this administrative court are subject to review by the Panamanian Supreme Court. The regulatory framework for Law 22 is being developed by the Panamanian Executive Branch. The Panamanian Government has generally handled bids in a transparent manner, although occasionally U.S. companies have complained of mishandling of certain procedures.

¶19. While Panama committed to become a party to the WTO Government Procurement Agreement (GPA) at the time of its WTO accession, its efforts to accede to the GPA have stalled. Although the Panama Canal Authority (PCA) has generally followed transparent and fair bidding processes, the United States was disappointed by the Government of Panama's exclusion of the PCA from its accession offer. The U.S. government is currently addressing the issue of the PCA within the context of bilateral FTA negotiations to help ensure a strong government procurement package that would give U.S. businesses fair opportunities to bid on the \$5.25 billion Panama Canal expansion project.

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IMPORT AND EXPORT SUBSIDIES  
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¶20. Panamanian law allows any company to import raw materials or semi-processed goods at a duty of three percent for domestic consumption or processing (pending certification that there is no national production), or duty free for export production, except for sensitive agricultural products, such as rice, dairy, pork, and tomato products. Companies not already receiving benefits under the Special Incentives Law of 1986 are allowed a tax deduction of up to 10 percent of their profits from export operations through ¶2007.

¶21. Due to its WTO obligations, Panama revised its export subsidy policies in 1997-98. The government originally had stated its intention to phase out its Tax Credit Certificate (CAT), which was given to firms producing certain non-traditional exports, by the end of 2001. However, during the WTO Ministerial Conference in November 2001, the Government of Panama asked for and received an extension for the use of CATs. The WTO extended this waiver until December 2006, allowing exporters to receive CATs equal to 15 percent of the export's national value added. Legislation enacted in 2004 aimed at eliminating the CAT and replacing it with another form of subsidiary has been repealed. The CAT program has been extended until June 2007 allowing exporters to receive CATs equal to 10 percent of the export's value added. The certificates are transferable and may be used to pay tax obligations to the government, or they can be sold in secondary markets at a discount. The government has, however, become stricter in defining national value added, in an attempt to reduce the amount of credit claimed by exporters.

¶22. In addition, a number of export industries, such as shrimp farming and tourism, are exempt from paying certain types of taxes and import duties. The Government of Panama

established this policy to attract foreign investment, especially in economically depressed regions, such as the city of Colon. Companies that profit from these exemptions are not eligible to receive CATs for their exports.

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Other Export-Related Items  
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¶23. The Tourism Law of 1994 (Law 8) allows a deduction from taxable income of 50 percent of any amount invested by Panamanian citizens in tourism development. There is currently draft legislation aimed at eliminating this benefit but it is uncertain whether such legislation will be enacted.

¶24. Law 25 of 1996 provides for the development of export processing zones (EPZ's) as part of an effort to broaden the Panamanian manufacturing sector while promoting investment, particularly in former U.S. military bases. Companies operating in these zones may import inputs duty-free if products assembled in the zones are to be exported. The government also provides other tax incentives to EPZ companies. There are 13 EPZ in Panama, two of which are inactive. The Panamanian Government is seeking to conform the regulations governing EPZ with those of the WTO.

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INTELLECTUAL PROPERTY RIGHTS PROTECTION  
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¶25. Intellectual property policy and practice in Panama is the responsibility of an Inter-institutional Committee. This committee consists of representatives from six government agencies and operates under the leadership of the Ministry of Commerce & Industry. It coordinates enforcement actions and develops strategies to improve compliance with the law. The creation of a specialized prosecutor for intellectual property-related cases has strengthened the protection and enforcement of intellectual property rights (IPR) in Panama. However, given Panama's role as a transshipment point, industry is concerned Panama will become susceptible to trading in pirated and counterfeit goods.

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Copyrights  
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¶26. Though Panama's 1994 copyright law modernized copyright protection and its 2004 update incorporated a special Copyright Office with anti-piracy enforcement powers, piracy remains a significant problem.

¶27. The government of Panama is a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonographs Treaty, but the Copyright Office has been slow to draft and implement further improvements to the Copyright Law. Nevertheless, the office has proposed to enhance border measures and establish new punishable offenses, such as for Internet-based copyright violations.

¶28. Though industry welcomes both the effective police and legal action, which have significantly reduced the rate of DVD piracy, internet piracy is quickly emerging in Panama. Both hard goods sales and films in theatrical release are often downloaded, reproduced on optical discs, and then distributed by street vendors. Despite ongoing investigations to detect laboratory facilities, the legal framework guiding internet use in the country remains incomplete. The United States is working with Panama through the current FTA negotiations to establish a legal regime to combat piracy of audiovisual products over the Internet, including notice and takes down provisions and clearly defined ISP liabilities as well as temporary copy protection, protection of technological protection measures, and protection against Electronic Rights Management Information removal/alteration.

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## Patents

129. Panama's 1996 Industrial Property Law provides a term of 20 years of patent protection from the date of filing. However, pharmaceutical patents are granted for only 15 years and can be renewed for an additional ten years, if the patent owner licenses a national company (minimum of 30 percent Panamanian ownership) to exploit the patent. The Industrial Property Law provides specific protection for trade secrets.

## Trademarks

130. Law 35 provides trademark protection, simplifies the process of registering trademarks and allows for renewal of a trademark for ten-year periods. The law's most important feature is the granting of ex-officio authority to government agencies to conduct investigations and to seize materials suspected of being counterfeited. Decrees 123 of November 1996 and 79 of August 1997 specify the procedures to be followed by Customs and Colon Free Zone (CFZ) officials in conducting investigations and confiscating merchandise. In 1997, the Customs Directorate created a special office for IPR enforcement, followed by a similar office created by the CFZ in 1998. The Trademark Registration Office has undertaken significant modernization with a searchable computerized database of registered trademarks that is open to the public as well as on-line registration.

## SERVICES BARRIERS

131. In general, Panama maintains an open regulatory environment for services. For some professions, such as insurance brokers, customs brokerage, freight forwarding, architects, engineers, medical doctors, lawyers, and psychologists, Panama requires that individuals hold a Panamanian technical license.

## INVESTMENT BARRIERS

132. Panama maintains an open investment regime and is receptive to foreign investment. Over the years the country has bolstered its reputation as an international trading, banking, maritime, and services center.

133. However, under the constitution, retail activity is reserved to Panamanians - an issue that the U.S. government seeks to address within the context of FTA negotiations. On a variety of investment issues, the Panamanian government was, until recently, often unresponsive to concerns raised by U.S. investors. For example, a few firms that are closely regulated by, or hold concessions from the Government of Panama, in the past encountered a lack of cooperation from certain officials and abrupt changes related to terms of various concessions or contracts.

134. The U.S.-Panama Bilateral Investment Treaty (BIT) entered into force in 1991 (with additional amendments in 2001). With some exceptions, the BIT ensures that U.S. investors receive fair, equitable and non-discriminatory treatment and that both Parties abide by international law standards such as for expropriation and compensation and free transfers. Conclusion of a bilateral FTA would suspend the availability of both investor-state and state-state dispute settlement under the BIT and replace it with investor-state and state-state dispute settlement under the FTA, except with regard to a dispute arising from an investment agreement and for existing investors for a ten-year period.

135. A 1998 investment law aimed to enhance new investment in Panama by guaranteeing that investors having a minimum investment of \$2 million will have no restrictions on capital

and dividend repatriation, foreign exchange use, and disposal of production inside a limited number of sectors in the economy. For a period of ten years, investors will not suffer any deterioration of the conditions prevailing at the time the investment was made.

¶36. On July 12, 2006, Panama enacted Law 27 which allows the Government of Panama to create enterprises to conduct oil and gas exploration, distribution, production, storing, industrialization, commercialization, importation, exportation and refining activities. Although the government has not yet created such an entity, American companies have expressed concern that Law 27 is ambiguous and may result in greater government intervention and restrictions on the energy sector.

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ELECTRONIC COMMERCE  
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¶37. In mid-2001, Panama became the first country in Central America to adopt a law specific to electronic commerce. The law was a collaborative effort between the public and private sectors, resulting from several months of detailed discussions and broad consultations. Panama's electronic commerce law has several important features: it gives legal force to any transaction or contract completed electronically; it creates the National Directorate of Electronic Commerce to oversee the enforcement of the law; and it defines certification organizations and establishes a voluntary registration regime. In addition, in August 2004 partial regulations to the 2001 law were issued to facilitate the registration of certification organizations. The law is expected to have a favorable impact on many sectors of Panama's services dominated economy, particularly the maritime sector.

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OTHER BARRIERS  
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Corruption  
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¶38. The judicial system can pose a problem for investors due to poorly trained personnel, huge case backlogs and a lack of independence from political influence. Amid persistent allegations of corruption in the government, particularly in the judiciary, the Torrijos administration campaigned in 2004 on a promise to &eradicate corruption.<sup>8</sup> Although the government continues to assert its commitment to combating corruption as part of its overall agenda of institutional reform, it has been slow to deliver concrete results.

EATON